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14 NUTRITION DISTRIBUTION LLC

15
16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 NUTRITION DISTRIBUTION LLC,
19 an Arizona Limited Liability
20 Company,

21 Plaintiff,

22 VS.

23 Dylan Culbertson aka Dylan Gemelli
24 dba SARMS X, SARMS1 and
25 iSARMS.com, and DOES 1 through
26 10, inclusive,

27 Defendants.

28 **CASE NO.: 16-2357**

**COMPLAINT FOR FALSE
ADVERTISING IN VIOLATION OF
THE LANHAM ACT § 42 (a)(1)(B))**

[DEMAND FOR A JURY TRIAL]

1 Plaintiff Nutrition Distribution, LLC, dba Athletic Xtreme (“ND” or “Plaintiff”),
2 by and through its undersigned attorneys, submits this Complaint against defendant
3 Dylan Culbertson aka Dylan Gemelli dba SARMS X and iSARMS.com (“SARMS X” or
4 “Defendant”), and in support thereof, avers as follows:

5 **INTRODUCTION**

6 1. This is a civil action arising out of Defendant’s unlawful and deceptive
7 business practices and false and misleading advertising in connection with its products
8 containing “Selective Androgen Receptor Modulators” (“SARMs”), including but not
9 limited to, S-4 (Andarine), MK-2866 (Ostarine), MK-677 (Nutrobal), RAD-140, GW-
10 501516 (Cardarine), and LGD-4033 (collectively, the “Research Chemicals”).

11 2. SARMs, like Defendant’s “Research Chemicals,” are synthetic drugs with
12 similar effects to illegal anabolic steroids. Consequently, there is a growing epidemic of
13 online retailers, like Defendant, selling SARMs (and other illicit and misbranded drugs)
14 to bodybuilders, competitive athletes, fitness enthusiasts, and other consumers seeking to
15 enhance their physiques and physical performance.

16 3. Critically, Defendant has falsely represented to consumers on its website
17 and product labeling that its “Research Chemicals” are “for research use only” and “not
18 for human consumption.” Contrary to these purported “disclaimers,” Defendant clearly
19 markets and advertises its products for personal use and consumption. In this regard,
20 SARMS X claims on its website that its Research Chemicals will provide numerous
21 purported health benefits, including but not limited to, treating obesity, treating
22 osteoporosis and muscle wasting, increasing muscle tissue, preventing bone loss, healing
23 joints and injuries, reducing body fat, increasing growth hormone, promoting weight loss,
24 increasing muscle strength, and increasing lean muscle mass.

25 4. Moreover, Defendant misrepresents to consumers that its “Research
26 Chemicals” are purportedly safe and have little to no adverse health and safety
27

1 consequences. Indeed, Defendant fails to disclose any of the many recognized side
2 effects of using SARMs.

3 5. For example and without limitation, SARMS X touts numerous purported
4 health “advantages and benefits” of its MK-2866 (Ostarine) product to consumers,
5 including but not limited to, “excellent for lean mass gains,” “truly shines when used for
6 body recomposition,” “helps increase endurance (aerobic or anaerobic),” “joint and
7 injury healing abilities,” “great sense of well being while on,” and “large increases in
8 strength.” Moreover, SARMS X promises consumers all of these benefits with “no
9 negative effects on liver, blood pressure or other internal organs” and “rapid recovery
10 time.”

11 6. With respect to its Nutrobal (MK-677) product, SARMS X promises
12 consumers the following “wide array of benefits,” including but not limited to, “increases
13 in fat free mass,” “enhanced sleep quality,” “a treatment for obesity and fat loss,”
14 “lowering of bad cholesterol (LDL),” “significant improvements in nitrogen balance,”
15 “reversal of diet-induced nitrogen wasting,” “treatment of catabolic conditions,”
16 “increase in basal [sic] metabolic rate,” “oral administration (no injections required),” and
17 “overall sense of well-being.” Again, SARMS X promises consumers these benefits with
18 “little to no side effects.”

19 7. Defendant has falsely marketed, advertised, and sold its products as
20 “Research Chemicals,” while turning a blind eye to their actual use by consumers, who
21 are uninformed of their known health and safety risks.

22 8. In fact, SARMs may pose significant health and safety risks to consumers.
23 Indeed, medical experts have opined that products containing SARMs “have many
24 recognized potential serious side effects, including hepatotoxicity (liver damage), and
25 markedly lower plasma HDL cholesterol (raising the risk of heart disease),” and may
26 have even more serious consequences that are currently unknown. Thus, medical experts
27

1 have concluded that the sale of products containing SARMs, like Defendant's "Research
2 Chemicals," is "highly dangerous to public safety."

3 9. Defendant also fails to disclose that SARMs are specifically prohibited for
4 use in sporting events by the World Anti-Doping Agency and the U.S. Anti-Doping
5 Agency, despite the fact that Defendant markets its products to bodybuilders, competitive
6 athletes, and other consumers seeking to improve their physical performance and
7 physiques.

8 10. This action seeks to enjoin Defendant from the marketing and sale of its
9 "Research Chemicals," in addition to other appropriate relief, as Defendant is illegally
10 and falsely marketing such products in violation of the Arizona Consumer Fraud Act,
11 A.R.S. § 44-1521, *et seq.*

12 11. Defendant's false, misleading, illegal and deceptive practices have unjustly
13 enriched Defendant at the expense of Plaintiff, and have caused Plaintiff extensive and
14 irreparable harm, including, but not limited to, loss of revenue, disparagement, and loss
15 of goodwill.

16 PARTIES

17 12. Plaintiff Nutrition Distribution, LLC, dba Athletic Xtreme ("ND" or
18 "Plaintiff") is an Arizona limited liability company with its principal place of business at
19 14215 N. 8th Pl., Phoenix, Arizona, 85022.

20 13. Defendant Dylan Culbertson aka Dylan Gemelli dba SARMS X, SARMS1
21 and iSARMS.com ("SARMS X" or "Defendant") is an individual residing in Nevada.

22 14. Plaintiff is ignorant of the true names and capacities of defendants sued
23 herein as Does 1- 10, inclusive, and therefore sued these defendants by such fictitious
24 names. Plaintiff will amend this Complaint to allege their true names and capacities
25 when ascertained. Plaintiff is informed and believes and thereon alleges that each of
26 these fictitiously named defendants is responsible in some manner for the occurrences
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1 herein alleged, and that Plaintiff's injuries as herein alleged were proximately caused by
2 the aforementioned defendants.

3 **JURISDICTION AND VENUE**

4 15. This Court has subject matter jurisdiction over this action pursuant to 15
5 U.S.C. § 1331 and 28 U.S.C. § 1333 (federal question jurisdiction) and 28 U.S.C. 1332
6 (diversity jurisdiction) because Plaintiff asserts causes of action arising under federal law
7 and the parties are citizens of different states and the controversy exceeds the value of
8 \$75,000.

9 16. This Court has personal jurisdiction over Defendant because it has, directly
10 or through its intermediaries (including distributors, retailers, and others), developed,
11 licensed, manufactured, shipped, distributed, offered for sale, sold, and advertised its
12 nutritional supplement products in the United States, the State of California, and this
13 district, including but not limited to, its "Research Chemicals." Defendant has
14 purposefully and voluntarily placed these products into the stream of commerce with the
15 expectation that they will be purchased in this district.

16 17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b)(2)
18 because a substantial part of the events or omissions which gave rise to the claim
19 occurred in this district. *Allstar Marketing Group, LLC v. Your Store Online, LLC*, 666
20 F. Supp. 2d 1109, 1128 (C.D. Cal. 2009). Alternatively, venue is proper in this judicial
21 district pursuant to 28 U.S.C. § 1331(b)(3).

22 **FACTUAL ALLEGATIONS**

23 18. The nutritional supplement industry is one of the fastest growing and most
24 lucrative in the United States. A recent Forbes article estimates that nutritional
25 supplement sales accounted for \$32 billion in revenue in 2012 and predicts this number
26 to grow to \$60 billion within ten years. The growth and size of the nutritional
27 supplement market and the relatively low barriers to entry provide perverse incentives for

1 unlawful and deceptive practices prohibited by the Arizona Consumer Fraud Act, A.R.S.
2 § 44-1521, *et seq.*, as well as other illegal activity.
3

4 **Plaintiff Nutrition Distribution & “Advanced PCT”**

5 19. Plaintiff is a cutting edge sports supplement manufacturer and marketer.
6 From its inception, Plaintiff was a leader in the nutritional supplement market,
7 specifically for bodybuilding.
8

9 20. Plaintiff has products in several categories of bodybuilding products,
10 including pre-workouts, muscle-gainers, fat burners, and male performance
11 enhancement.
12

13 21. Around 2008, Plaintiff began developing a new product in the muscle-gainer
14 sub-market of the nutritional supplement world.
15

16 22. After devoting its resources for over a year on product development and
17 testing, Plaintiff introduced “Advanced PCT” in July 2009.
18

19 **Defendant SARMS X And Its “Research Chemicals”**
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21 23. Defendant SARMS X is a competing supplement company in Nevada.
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23 24. Defendant has falsely represented to consumers that its “Research
24 Chemicals” are for “for research use only” and “not for human consumption.” Contrary
25 to these purported “disclaimers,” Defendant clearly markets and advertises its products
26 for personal use and consumption.
27

28 25. Indeed, SARMS X claims on its website that its Research Chemicals will
29 provide numerous purported health benefits, including but not limited to, treating obesity,
30 treating osteoporosis and muscle wasting, increasing muscle tissue, preventing bone loss,
31 healing joints and injuries, reducing body fat, increasing growth hormone, promoting
32 weight loss, increasing muscle strength, and increasing lean muscle mass.
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34 26. For example, SARMS X touts numerous purported health “advantages and
35 benefits” of its MK-2866 product to consumers, including but not limited to, “excellent
36 for lean mass gains,” “truly shines when used for body recomposition,” “helps increase
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1 endurance (aerobic or anaerobic)," "joint and injury healing abilities," "great sense of
2 well being while on," and "large increases in strength." Moreover, SARMS X promises
3 consumers all of these benefits with "no negative effects on liver, blood pressure or other
4 internal organs" and "rapid recovery time."

5 27. With respect to its Nutrobal (MK-677) product, SARMS X promises
6 consumers the following "wide array of benefits," including but not limited to, "increases
7 in fat free mass," "enhanced sleep quality," "a treatment for obesity and fat loss,"
8 "lowering of bad cholesterol (LDL)," "significant improvements in nitrogen balance,"
9 "reversal of diet-induced nitrogen wasting," "treatment of catabolic conditions,"
10 "increase in basil [sic] metabolic rate," "oral administration (no injections required)," and
11 "overall sense of well-being." Again, SARMS X promises consumers these benefits with
12 "little to no side effects."

13 28. Defendant has falsely marketed, advertised, and sold its products as
14 "Research Chemicals," while turning a blind eye to their actual use by consumers, who
15 are uninformed of their known health and safety risks.

16 29. Defendant's false advertising is harmful to the marketplace for dietary and
17 nutritional supplements and potentially to individual consumers. Defendant has created
18 an illegitimate marketplace of young bodybuilders who will gain muscle "at all costs,"
19 but who are not informed of the dangers of Defendant's products. Users of Defendant's
20 "Research Chemicals" have little incentive to use a natural product like Advanced PCT
21 until they are hurt or the "Research Chemicals" are taken off the shelves.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(False Advertising in Violation of Section 43(a)(1)(B) of the Lanham Act)

25 30. Plaintiff incorporates the allegations contained in the foregoing paragraphs
26 as though fully set forth herein in their entirety.

1 31. On its website and through other promotional materials, Defendant has
2 purposely made false and misleading statements concerning its “Research Chemicals.”
3 In particular, Defendant has falsely represented to consumers that its “Research
4 Chemicals” are for “for research use only” and “not for human consumption.”
5

6 32. Contrary to these purported “disclaimers,” Defendant clearly markets and
7 advertises its products for personal use and consumption. In this regard, SARMS X
8 claims on its website and otherwise that its Research Chemicals will provide numerous
9 purported health benefits, including but not limited to, treating obesity, treating
10 osteoporosis and muscle wasting, increasing muscle tissue, preventing bone loss, healing
11 joints and injuries, reducing body fat, increasing growth hormone, promoting weight loss,
12 increasing muscle strength, and increasing lean muscle mass.
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14 33. Critically, Defendant misrepresents to consumers that its “Research
15 Chemicals” are purportedly safe and have little to no adverse health and safety
16 consequences. Indeed, Defendant fails to disclose any of the many recognized side
17 effects of using SARMs.
18

19 34. For example, SARMS X touts numerous purported health “advantages and
20 benefits” of its MK-2866 product to consumers, including but not limited to, “excellent
21 for lean mass gains,” “truly shines when used for body recomposition,” “helps increase
22 endurance (aerobic or anaerobic),” “joint and injury healing abilities,” “great sense of
23 well being while on,” and “large increases in strength.” Moreover, SARMS X promises
24 consumers all of these benefits with “no negative effects on liver, blood pressure or other
25 internal organs” and “rapid recovery time.”
26

27 35. With respect to its Nutrobal (MK-677) product, SARMS X promises
28 consumers the following “wide array of benefits,” including but not limited to, “increases
in fat free mass,” “enhanced sleep quality,” “a treatment for obesity and fat loss,”
“lowering of bad cholesterol (LDL),” “significant improvements in nitrogen balance,”
“reversal of diet-induced nitrogen wasting,” “treatment of catabolic conditions,”

1 “increase in basil [sic] metabolic rate,” “oral administration (no injections required),” and
2 “overall sense of well-being.” Again, SARMS X promises consumers these benefits with
3 “little to no side effects.”

4 36. Defendant has falsely marketed, advertised, and sold its products as
5 “Research Chemicals,” while turning a blind eye to their actual use by consumers, who
6 are uninformed of their known health and safety risks.

7 37. In fact, SARMS may pose significant health and safety risks to consumers.
8 Indeed, medical experts have opined that products containing SARMS “have **many**
9 **recognized potential serious side effects**, including hepatotoxicity (liver damage), and
10 markedly lower plasma HDL cholesterol (raising the risk of heart disease),” and may
11 have even more serious consequences that are currently unknown. Thus, medical experts
12 have concluded that the sale of products containing SARMS, like Defendant’s “Research
13 Chemicals,” is “**highly dangerous to public safety.**”

14 38. Moreover, Defendant fails to disclose that SARMS are specifically
15 prohibited for use in sporting events by the World Anti-Doping Agency and the U.S.
16 Anti-Doping Agency, despite the fact that Defendant markets its products to body
17 builders, competitive athletes, and other consumers seeking to enhance their physical
18 performance and physiques.

19 39. The use of such falsely marketed substances has the tendency to deceive a
20 substantial segment of the public and consumers, including those in California, into
21 believing that they are purchasing a product with different characteristics.

22 40. The deception is material because it is likely to influence a consumer’s
23 purchasing decision, especially if the consumer is concerned about the consequences of
24 taking steroids or other illegal substances.

25 41. Defendant has introduced its false and misleading statements into interstate
26 commerce via marketing and advertising on various websites and shipment of its
27 products into interstate commerce containing false and misleading advertising.

42. Plaintiff has suffered both an ascertainable economic loss of money and reputational injury by the diversion of business from Plaintiff to Defendant and the loss of goodwill in Plaintiff's products. Indeed, Defendant's conduct is a black eye on the industry as a whole, and has the tendency to disparage Plaintiff's products and goodwill.

43. Defendant's actions, as described above, constitute false and misleading descriptions and misrepresentations of fact in commerce that, in commercial advertising and promotion, misrepresent the nature, characteristics, and qualities of its products in violation of Section 43(a)(1)(B) of the Lanham Act.

PRAYER FOR RELIEF

Wherefore, Plaintiff Nutrition Distribution LLC prays for judgment against Defendant SARMS X (“SARMS X ” or “Defendant”) as follows:

1. For preliminary and permanent injunctive relief enjoining Defendant from producing, licensing, marketing, and selling any and all products containing “Selective Androgen Receptor Modulators” (“SARMs”), including but not limited to, S-4 (Andarine), MK-2866 (Ostarine), MK-677 (Nutrobal), RAD-140, GW-501516 (Cardarine), and LGD-4033, and enjoining Defendant from use of its website “www.sarmsx.com”;
2. For an award of compensatory damages to be proven at trial in accordance with 15 U.S.C. § 1117;
3. For an award of any and all of Defendant’s profits arising from the foregoing acts in accordance with 15 U.S.C. § 1117 and other applicable laws;
4. For restitution of all Defendant’s ill-gotten gains;
5. For treble damages in accordance with 15 U.S.C. § 1117;
6. For punitive damages;
7. For costs and attorneys’ fees; and

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2 8. Any other relief the Court may deem appropriate.
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DATED: October 7, 2016

LERNER & WEISS

By: _____
Landon Lerner, Esq.
NUTRITION DISTRIBUTION LLC

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: October 7, 2016

LERNER & WEISS

By: _____
Landon Lerner, Esq.
NUTRITION DISTRIBUTION LLC